

REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion is respectfully requested.

Claims 1-50 are pending in the application; Claims 6-46 are withdrawn from consideration; Claims 1 and 5 are amended, and new Claims 47-50 are added by the present amendment. Support for amended Claim 1 and new Claims 47-50 can be found in the specification, claims and drawings.<sup>1</sup> Thus, no new matter is presented.

In the outstanding Official Action, Claim 1 was objected to because of a minor informality; Claim 5 was rejected under 35 U.S.C. § 112, second paragraph, as indefinite; and Claims 1-5 were rejected under 35 U.S.C. § 103(a) as unpatentable over Russo (U.S. Patent No. 5,619,247) in view of Kobata et al. (U.S. Publication No. 2002/0077985, hereinafter “Kobata”).

The Official Action objected to Claim 1, because the use of the term “comparing” in the preamble. The inclusion of the term “comparing” in Claim 1 appears to be the result of a translation error and is replaced with the term “comprising”, as suggested in the Official Action.

Accordingly, Applicant respectfully requests that the objection to Claim 1 be withdrawn.

Claim 5 was rejected under 35 U.S.C. § 112, second paragraph, because “the phrase ‘given frequency’ is a relative phrase, which renders the claim indefinite.” In response, Claim 5 is amended to recite “a frequency” instead of “a given frequency”, and is no longer a relative phrase.

Accordingly, Applicant respectfully requests that the rejection of Claim 5 under 35 U.S.C. § 112, second paragraph, be withdrawn.

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<sup>1</sup> Specification p. 40, lines 3-20; p. 41, lines 10-13 and Fig. 11; and p. 13, lines 12-20 and Figs. 5-6.

Independent Claim 1 was rejected under 35 U.S.C. § 103 as unpatentable over Russo in view of Kobata. Applicant respectfully submits that amended independent Claim 1 states novel features clearly not taught or rendered obvious by the applied references.

Amended Claim 1 relates to a method for distributing music from a server to a music reproduction apparatus via a communications medium. Specifically, a server receives a request to distribute music from the music reproduction apparatus and, in response, generates a distribution file which is sent to the music reproduction apparatus. The distribution file includes the requested music information as well as information concerning settings and conditions required for transmitting information from the reproduction apparatus to the server. The reproduction apparatus then transmits to the server a number of times the music information is reproduced along with attribution of the reproduced music information. The copyright holder to whom a copyright fee should be paid is identified based on the music information reproduced by the music reproduction apparatus, and the copyright fee is paid.

Turning to the primary reference, Russo describes a stored program pay-per-play system including a high-capacity storage medium facilitating compilation of video, audio or other programs at a subscriber site.<sup>2</sup> In Russo, the recording of such programs may take place at any time preceding playback, however billing occurs only when, and if, the subscriber selects a program for replay or actually enjoys the program substantially in its entirety.<sup>3</sup> Further, billing is based on a store-credit or account debiting scheme.

Amended Claim 1 recites, *inter alia*, a music distribution method, comprising:

... identifying, by the server, a copyright holder to whom a copyright fee should be paid based on said music information reproduced by said music reproduction apparatus, any paying the copyright fee.

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<sup>2</sup> Russo Abstract.

<sup>3</sup> Id.

Russo fails to teach or suggest the above-noted claimed feature. Instead, Russo describes that the viewing system is configured to store a level of credit that is debited each time a user selects a program for replay or enjoys the program. The user is able to store a credit amount with the distribution service, or can be charged for each individual program that is replayed or reproduced. However, at no point does Russo teach or suggest that the billing or payment information corresponds to a copyright holder, much less identifying a copyright holder to whom a copyright fee should be paid, and paying the copyright fee, as recited in amended Claim 1.

Kobata describes a method for controlling and managing distributed digital content. Specifically, Kobata describes an authentication procedure, in which a globally unique content ID for the software digital content is checked for the digital rights assigned to the particular digital content being installed.<sup>4</sup> A digital certificate can be used to identify the end-user and the computer device on which the digital content is being installed.

Kobata further describes that a messenger unit may be capable of sending messages relating to pricing schedules for digital rights, and that a user is capable of ordering additional digital rights to gain more functionality in relation to the digital content.<sup>5</sup> However, as discussed above in relation to Russo, Kobata does not describe that the billing or payment information corresponds to a copyright holder whatsoever. Thus, Kobata, fails to teach or suggest identifying a copyright holder to whom a copyright fee should be paid, and paying the copyright fee, as recited in amended Claim 1.

Accordingly, Applicant respectfully requests that the rejection of Claim 1 under 35 U.S.C. § 103 be withdrawn. As Claims 2-5, and new Claims 47-50 depend from amended Claim 1, it is submitted that these claim also patentably define over Russo and/or Kobata.

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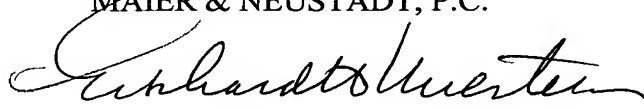
<sup>4</sup> Kobata Fig. 10.

<sup>5</sup> Id. at ¶ [0135].

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claims 1-5 and 47-50 is definite and patentably distinguishing over the applied references. The present application is therefore believed to be in condition for formal allowance and an early and favorable consideration of the application is therefore requested.

Respectfully submitted,

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